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REPORT ON
ZONING & LICENSING OF RESIDENTIAL FACILITIES
IN HAMILTON-WENTWORTH

Presented to:

The Executive Committee
and
Board of Directors

Prepared by:

Jody Orr, Senior Research Associate
Kim Van Louwe, Research Associate

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HAMILTON, ONTARIO

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THE SOCIAL PLANNING and RESEARCH COUNCIL of Hamilton and District

155 JAMES ST. S., STE. 602 HAMILTON, ONTARIO L8P 3A4 522-1148

ZONING & LICENSING OF RESIDENTIAL FACILITIES IN HAMILTON-WENTWORTH

For some time, the Government of Ontario has been committed to a policy of de-institutionalization. This policy is designed to ensure that members of the community are cared for where possible in the community in a way which protects both the interests of the individual and the neighbourhood.

The provision of facilities for those individuals who, due to emotional, physical, mental or social conditions, could benefit from community-based care in a group living situation in the community as opposed to an institution, involves municipalities in several ways. First, the geographic location of facilities depends on local zoning decisions. Second, where provincial legislation does not supercede local regulation, the licensing of facilities is a municipal responsibility. Third, it is at the municipal level that acceptance or rejection of such facilities by surrounding residents will be most strongly expressed as facilities locate, or attempt to locate, within local neighbourhoods.

De-institutionalization as a policy has been concretized in a number of ways such as increased funding for community support services by the Provincial government, and the development of various Acts and regulations for the licensing, funding and programming of special facilities (for example, the Homes for Special Care Act, the Charitable Institutions Act, et cetera). In the two important areas of zoning and licensing, however, the Provincial government has allowed municipalities discretionary power which impacts on the even spread and development of community-based facilities across the Province.

A. ZONING: PROVINCIAL POSITION

Speaking in the Legislative Assembly of Ontario on October 18, 1979, the Honourable Mrs. Margaret Birch, Minister for Social Development, affirmed a 1978 policy statement of encouraging

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municipalities to allow group homes (residential facilities) in all residential areas:

> "We cannot agree with the suggestion that we introduce legislation to amend the Planning Act so that communities will be forced into accepting group homes. It is not our desire to mandate in this way. The philosophy and the intent of this government is to achieve our objectives through co-operation with municipalities.
>
> I might say, though, that I am disappointed when municipalities do not accept what I perceive to be their responsibility to their fellow citizens who particularly need care in a home-like setting of a group home."

When contacted, Mrs. Jill Hutcheon, the provincial co-ordinator for group homes advised us that the current objective at the provincial level is to promote and encourage the policy of allowing group homes in every residential zone in municipalities across Ontario. A public relations package has been prepared and presentations are being made to many municipalities to encourage them to adopt the provincial policy of "non-restrictive by-laws" for group homes. To the best of our knowledge, there is no plan for provincial legislation regarding this problem at present.

The government position of permitting discretionary changes to municipal zoning by-laws with regard to the location of residential care facilities of all types has led to a situation where some municipalities have responded with permissive zoning, others with restrictive zoning and still others with no zoning initiatives at all. The municipalities composing Hamilton-Wentworth effectively demonstrate this uneven response to the provincial government's stated preference with regard to zoning.

B. ZONING OF RESIDENTIAL FACILITIES IN HAMILTON-WENTWORTH

1. Definition of Group Home:

It must be stressed that the way in which area municipalities across Ontario define the term "group home" is variable, however, an amendment to The Municipal Act has set forth the following description of a group home:

> "'group home' means a residence that is licensed or funded under an Act of Parliament of Canada or Province of Ontario for the accommodation of three to ten persons, exclusive of staff, living under supervision in a single housekeeping unit and who, by reason of their emotional, mental, social or physical condition or legal status, require a group living arrangement for their well being."

The law permits the council of a local municipality to pass by-laws requiring the registration of group homes. Thus, the local council has the freedom to tailor the location, type, size and number of group homes it desires to its own preferences.

2. Municipal Level:

a) City of Hamilton:

On January 13, 1981, City Council approved the amendment of its zoning by-law concerning group homes and created a new by-law (No. 81-27) respecting "Residential Care Facilities, Short-Term Care Facilities and Lodging Homes." Group Homes have been classified under the heading of "residential care facilities" in the new by-law.

According to the by-law:

> "residential care facility" means a fully detached residential building occupied wholly by a maximum number of supervised residents as permitted by a district, exclusive of staff, residing on the

premises as a group because of social, emotional, mental or physical handicap or personal distress for the purpose of achieving well-being through either one or more programs of self-help, professional care, guidance, supervision not otherwise beneficially available within the resident's own family or if the resident were residing on the premises where,

(a) the residents are referred to the facility by a hospital, court or government agency; or

(b) the facility received all or part of its non-capital funds from a government; or

(c) the facility is regulated by or supervised under any Federal or Provincial statute or a municipal by-law,

but does not include a foster home, sanitarium, nursing home or home for the aged.

The by-law also requires that the residential care facility lot be at least 12.0 metres wide and have an area of at least 360.0 square metres. Furthermore, the minimum radial distance between any two residential care facilities must be 180.0 metres from lot line to lot line.

Normally, a residential care facility must not accommodate more than six residents, however, in certain zonings as many as twenty residents can be accommodated as the following shows:

Zoning Designation	Description	Maximum No. of Residents
"C"	Residential - Single-family dwellings	6
"D"	Residential - one-and-two - family dwellings	6
"DE" (2)(3)	Residential - low density Multiple family dwellings	6
"E"	Multiple residential	20
"H"	Commercial	20

b) Town of Dundas:

On May 22, 1979, the Dundas Council approved the amendment of its zoning by-law concerning group homes and created a new by-law (No. 3111-79) respecting "Group Homes".

According to the by-law:

> "'group home' shall mean any supervised, community based group living arrangement, located in a fully-detached building occupied wholly for such use, by occupants with social, legal, emotional or mental problems, that is developed for the well being of its occupants through self-help and/or professional care, guidance, and supervision unavailable in the occupant's own family or in an independent situation, provided that,
>
> (a) the occupants of the Group Home are referred to the Group Home by a hospital, court or government agency; or
>
> (b) such facility is government funded either wholly or in part, other than funding provided solely for capital purposes; or
>
> (c) the facility is regulated or supervised under any general or special act. (Municipal, Provincial or Federal)"

The by-law also requires that the group home lot be at least 15.0 metres wide and have an area of at least 450.0 square metres. Furthermore, the minimum separation distance between individual group homes must be 275 metres as measured between the property lines.

The maximum number of occupants permitted in a group home, exclusive of staff, is six. Group homes may only be located in areas zoned "RM2" (low density residential with a majority of single family dwellings). There are presently two group homes located in Dundas.

c) Town of Stoney Creek:

Stoney Creek does not presently have a zoning by-law specific to group homes. It does, however, have one home which may be classified as a group home. This home was permitted under a zoning by-law for the Town which allows for "boarding or rooming homes" and was approved by the Town Council when an application to locate a group home in Stoney Creek was made.

The Town has five different zoning codes for its geographic area and, depending upon which area the application to locate a group home is being made, the Council will consider the request based on its own merits at that time.

d) Township of Glanbrook:

Glanbrook does not presently have a zoning by-law specific to group homes. However, the Township does have an "Institutional I Zone" which permits:

> "institutional uses, day care centres, homes for emotionally, mentally and physically handicapped persons, nursing homes and homes for the aged and cemetaries".

There are presently no group homes in Glanbrook, however, if application for a home was made and approved by the Township Council, it would be located in an Institutional I Zone. It should be noted that Glanbrook is looking at amending its current by-law so as not to restrict either the location or distance separation between two group homes. This new by-law has not been O.M.B. approved.

e) Township of Flamborough:

Flamborough presently has no zoning by-law specific to group homes; however, there are two group homes in the Township.

These group homes were permitted under a "single family residence" by-law which has a definition of "family" broad enough to permit the Council to approve the applications as they arose.

f) Town of Ancaster:

Ancaster does not have any by-law relating to group homes currently. There are also no group homes in the area, but the municipality is reviewing the matter in light of the recent changes in The Planning Act and may revise their zoning laws accordingly.

If an application for a group home were approved by Council, the appropriate regulations to control its location would be developed. (It was the opinion of a local planner that the Council would probably not permit the location of a group home in a residential area).

C. LICENSING: PROVINCIAL POSITION

To understand the Provincial position on licensing, it is necessary to break out children's services and adult services. To quote again from the Honourable Mrs. Margaret Birch:

> "As you know, the Children's Services Act has brought together the operation of children's services under one piece of legislation for licensing purposes. A central registry of all group homes is now maintained in the children's services division.
>
> The regulations under this new Act will provide municipalities with sufficient assurance of statutory provincial control over the standards and operation of not only group homes but other children's residences. It is true that we don't have the same standards for adult provincial homes in place yet, but they are being developed...."

While there are selected facilities operating under provincial jurisdiction and licensing (such as the Homes for Special Care), provincial licensing of adult residential facilities is more selective, allowing a large number of special needs clients to be housed in facilities which remain under the licensing authority of municipalities. In particular, these facilities include lodging homes and boarding homes (many of which house the poor segments of the ex-psychiatric and elderly populations).

The Province has clearly stated that it does not intend to license such facilities. The Municipal Act (R.S.O. 1970, Chapter 352, Section 22) allows, but does not compel, municipalities to license, regulate and inspect all residential facilities which provide room or room and board for compensation to three or more adults not related by blood or marriage to the operator, with the exception of those facilities licensed by the Province of Ontario.

The discretionary power allotted to municipalities means that there has been uneven licensing across Ontario. Some municipalities have developed licensing by-laws, others have not.

In municipalities which have not taken the initiative to license lodging homes, homes operating independently (not licensed by the Province) do not have to meet particular requirements as to fire safety, health standards, overcrowding, et cetera. While fire departments, et cetera, still have the right to inspect facilities, when not licensed, there is no guarantee that facilities will be identified and their existence brought to the attention of the appropriate authorities.

D. LICENSING OF ADULT RESIDENTIAL FACILITIES IN HAMILTON-WENTWORTH

The variability in zoning in our Region is replicated in the variability of licensing of non-provincially licensed facilities.

a) City of Hamilton:

The City of Hamilton has both an ordinary lodging home license and a Second Level Lodging Home license which was introduced in 1980. Of the some 100 licenses granted in 1981, 27 (as of August 15) were Second Level Lodging Home Licenses.

The key discriminating factors between the two licenses include:

i) stricter fire and safety regulations must be met by Second Level Lodging Homes;

ii) Second Level Lodging Homes must provide 24 hour supervision, with the operator or an adult employee of the operator on the premises;

iii) Second Level Lodging Homes offer supervision of the activities of daily living (see Appendix A for definitions).

Hamilton has, in fact, been one of the first municipalities in Ontario to review the needs of clients in lodging homes and to develop a licensing by-law which addresses those needs along the dimensions of supervision and safety.

b) Town of Dundas:

Currently, Dundas has no licensing by-law for lodging homes, and as far as we could ascertain, there was no immediate plan to initiate such a by-law. There are at least three such facilities in the Town of Dundas.

c) Stoney Creek:

While Stoney Creek does not currently have a licensing by-law, staff are reviewing the need for such a by-law. In conversation, it was determined that this review was probably directed toward an ordinary licensing by-law.

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d) Township of Glanbrook:

The Township of Glanbrook passed a Second Level Licensing By-law in January, 1981 (223-81), which is similar to Hamilton's. Glanbrook has no ordinary lodging home license and reported having no such facilities.

e) Township of Flamborough:

Flamborough has no licensing by-law for lodging homes, but staff reported that the issue was under investigation.

f) Town of Ancaster:

The Town of Ancaster has no licensing by-law, but we understand that, at the staff level, there has been investigation of the issue.

E. THE EFFECTS OF UNEVEN DEVELOPMENT

1. Zoning

Uneven zoning in Hamilton-Wentworth as a Region has significant implications for future location of residential facilities. Restrictive zoning by itself implies a concentration of facilities within an area. Restrictive zoning or the lack of zoning in some municipalities with concurrent permissive zoning in adjacent areas may mean new facilities will tend to locate in areas where permissive zoning regulations exist. The implication again is the development of concentrations of facilities in only a few areas of the Region.

2. Licensing

Uneven licensing may have several effects:

i) residents in lodging homes which are not licensed are open to the dangers inherent in a non-licensed facility i.e. no fire or safety regulations;

ii) where licensing is not even across the Region, there is the possibility that operators may attempt to locate or even relocate lodging homes in area municipalities which do not license, thus avoiding the expenses which might be incurred in bringing their facilities up to licensing standards.

F. SOCIAL PLANNING AND RESEARCH COUNCIL POSITIONS

The Social Planning and Research Council has had a long involvement in the issues surrounding de-institutionalization. Our position, in general, is best summed up in a paragraph in our November, 1977 "Response on Behalf of Group Homes to Alderman Brian Hinkley's Report on Lodging Homes, Half-Way Houses and Nursing Homes" (p.2):

> It is the belief of the Social Planning and Research Council that communities should take responsibility for their own needs and services as this promotes a greater sense of community and adds to the quality of life. If....communities are permitted to exclude those in need, an atmosphere of non-caring and apathy is fostered and the total community suffers.
>
> (This policy position was re-affirmed in spirit by the Board of Directors endorsement of the Ontario Welfare Council paper "Community-Based Services: the Need for a Planned Approach")

By logical extension, where those in need are housed within the community, a failure to ensure that even the minimal standards of safety exist is irresponsible and as equally non-caring.

The failure of some municipalities in Hamilton-Wentworth to permissively zone residential facilities, and in many cases the concurrent failure to license lodging homes stands in direct opposition to policy positions developed by the Social Planning

and Research Council over the last few years, positions which would, in fact, suggest that the SPRC call on municipalities to license lodging homes and to develop permissive zoning by-laws for residential facilities. However, it is not enough to merely "urge" municipalities to undertake the necessary zoning and licensing by-law developments, for at the root of the issue lie clear attitudinal and educational problems. In other words, we must carefully consider how effective legislated change - by itself - can be.

In the estimation of staff, several issues should be addressed by the Executive and Board:

i) does the Social Planning and Research Council wish to continue with its stated policy of support for community responsibility and, by extension, support for non-restrictive zoning and, although not yet articulated, support for municipal initiatives around the licensing of lodging homes;

ii) if the Social Planning and Research Council maintains such a policy, a decision must be made as to the action plan to be developed around this issue. Such a plan could incorporate:

a) letters to the area municipalities which would explain our concerns and/or urge action on these two issues

and/or

b) consultations with area politicians, with the dual purposes of education on the issue as well as lobbying for change

and/or

c) public forums could be held on the issue for the purpose of education (e.g. what are group homes, who are the residents, what are the myths vs the realities, et cetera

and/or

d) a media campaign with a dual focus of public education and lobbying for municipal action on these issues

APPENDIX A

DEFINITIONS: "BOARDING", "LODGING" HOUSES, "REST" HOMES

"Lodging house" means any house or other building or portion thereof in which persons are harboured, received or lodged for hire, but does not include a hotel, hospital, nursing home, home for the young or the aged or institution if the hotel, hospital, home or institution is licensed, approved or supervised under any other general or special Act."

Section 353, Paragraph 777 of the Municipal Act, R.S.O. 1970

"Boarding, Lodging, Rest Homes - a privately run family home or corporation-operated residence providing home and board and such personal care as needed to two or more unrelated persons of any age group for gain or reward, BUT excluding those facilities accommodating persons requiring nursing care as determined by a duly qualified physician or his representative.

"Guidelines for Rest Homes, Lodging Houses, Group Homes", Ministry of Health, February, 1976

"Lodging house" means a dwelling in which four or more persons are lodging for gain, with or without food and without separate cooking facilities, by the week or more than a week and which is licensed as a lodging house."

By-Law No. 81-27 (To Amend Zoning By-Law No. 6593) Respecting Residential Care Facilities, Short-Term Care Facilities and Lodging Houses, City of Hamilton.

"Second Level Lodging House" means a House:

i) which accommodates four or more Residents,
ii) where, for a fee, the Operator offers to Residents guidance in the activities of daily living, and advice and information,
iii) where, 24 hours a day, at least the Operator or one adult employee of the Operator, is on duty in the House and able to furnish such guidance...

(1) activities of daily living mean those activities of the individual that maintain his sufficient nutrition, hygiene, warmth and rest."

By-Law 80-259 as amended by By-Law 81-93, City of Hamilton.